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10/796,025	03/10/2004	Wataru Tazoc	503.43626X00	2138

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EXAMINER
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HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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05/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/796,025

Applicant(s)

TAZOE ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments, see Remarks, pages 6 and 7, filed March 8, 2007, with respect to the rejection of claims 20, 21, 23 and 24 under 35 U.S.C. 112 have been fully considered and are persuasive. The rejection of claims 20, 21, 23 and 24 under 35 U.S.C. 112 has been withdrawn.

Applicant's arguments with respect to claims 18-24 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's arguments regarding the prior art of Lawrence, specifically that Lawrence does not teach a top sheet that keeps the urine absorbent material highly airtight along with an outer sheet, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the outer sheet keeps the urine absorbent material highly airtight along with the top sheet) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As the claim currently reads, the top sheet covers the absorbent material along with the outer sheet, however the topsheet alone keeps the urine absorbent material highly airtight.

In response to applicant's argument that there is no suggestion to combine the references of Lawrence and Conkling, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the devices of Lawrence and Conkling lies in the fact that they seek to solve a similar problem in the art, and further that the device of Lawrence operates when there is a noticeable presence of urine in the absorbent material, and the notification of said presence of urine suggests the use of a urine sensor as taught by Conkling. As further support for this argument, applicant is referred to Fig. 12 of Conkling, which shows a female version of the urine-collecting device that is structurally substantially identical to that of Lawrence.

In response to applicant's argument that Reed is nonanalogous art with respect to Lawrence and Conkling, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art of Reed is reasonable pertinent in that Reed teaches an absorbent wound dressing that contacts skin and adjusts humidity level in the area adjacent the skin by adjusting its breathability, which is clearly applicable and beneficial to the absorbent article art and thus is reasonably pertinent to the problem solved by the devices of Lawrence and Conkling. Further applicant argues that the Office admits that the combined teaching of Lawrence and Conkling and Reed does not teach the claimed breathability measurements. The rejection of claims 20,21,23 and 24 has been restated to reflect that since Reed teaches the claimed blend of materials for said top sheet, the combined teaching of Lawrence and Conkling and Reed employing the top sheet substrate taught by Reed inherently teaches moist and dry breathabilities that fall within the relevant claimed ranges set forth in claims 21, 23 and 24. Contrary to applicant's assertion, the Office has not fully admitted the Reed does not teach the

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claimed breathabilities, as the teaching cited in the rejection of claims 20, 21, 23 and 24 was pertinent to specific examples and compositions of the film taught by Reed.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence et al (U.S. Patent No. 5,911,222) in view of Conkling et al (U.S. Patent No. 5,002,541).

With respect to **claims 18,22**: Lawrence teaches an automatic urine disposal device comprising a urine receptacle 10 having an outer sheet 28 having a substantially rectangular shape and having a U-shaped cross-section (Fig. 2a) (Col. 5, lines 65-67), having a width at the middle portion in the longitudinal direction being narrow, so that it is shaped like an hourglass (Fig. 1), and having a gather provided along its periphery at cut out areas 15,16, formed from the backsheet 28, which is a liquid-impermeable and non-breathable thin sheet made of soft flexible materials, and accommodating a urine absorbent material 24 (Col. 6, lines 58-65) for storing urine; and a top sheet 21 formed as a liquid-permeable non-woven fabric, covering a top surface of said urine absorbent material 24 (Fig. 2a) with said outer sheet and keeping said urine absorbent material highly airtight as well as said outer sheet 28, a sealed urine tank 113 (Fig. 10); interface device 17 having an entrance zone for liquid entering through a porous membrane from absorbent material 24, said entrance zone with said porous material considered herein to function as a drainage port. (Col. 6, lines 1-8); a urine drainage tube 110 for discharging urine through said urine drainage port from said urine absorbent material 24 to said

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urine tank 113, and made of soft flexible materials (as evidenced by Lawrence's teaching that said drain tube is capable of being hermetically sealed, i.e. it is deformable and thus flexible (Col. 6, lines 8-10); a vacuum pump 112 for decreasing air pressure in said urine tank 113; wherein urine is absorbed into said urine absorbent material 24 through a hole 20 on said top sheet upon wearer's urination, and said urine is discharged from said urine absorbent material 24 through said urine tube 110 to said urine tank 113.

Lawrence does not teach a urine sensor. Conkling teaches a urine collecting device 10 having a urine sensor 92 provided along urine drainage tube 96 and being electrically conductive in responsive to detecting a urination in the vicinity of one end of a urine drainage port 94, said urine sensor 92 detecting wearer's urination and initiating vacuum pump 12. ('541, Col. 4, lines 35-63, Col. Col. 5, lines 36-45) Conkling teaches that the sensor operates to activate a pump 12 for draining the urine from vessel 78, which would allow for increased storage area for incoming urine, therefore it would be obvious to one of ordinary skill in the art to modify the device of Lawrence so as to contain a urine sensor that activates the pump taught by Lawrence to drain said receptacle as taught by Conkling.

Claims 19-21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence et al ('222) in view of Conkling et al ('541) as applied to claims 18 and 22 above, and further in view of Reed et al (WO 96/08223).

With respect to **claim 19**: Top sheet 21 is made of non-woven fabric, i.e. polypropylene and polyester blend or cotton, and therefore does not teach cotton and said blend. Conkling also does not teach a top sheet comprised of cotton and polyester/polypropylene blend. Reed teaches a textile absorbent layer suitable for a topsheet comprising a blend of cotton and

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polypropylene and polyolefin polyester. ('223, Page 26, lines 13-25) Reed teaches that this material is spysorbent, i.e. its absorbent capability varies with ambient humidity in such a way that when the humidity is increased during wear, the breathability is greater than when the article is in a dry state, preventing bacterial formation by buildup of excess exudate (Page 6, lines 1-11), thus it would be obvious to one of ordinary skill in the art to modify the topsheet taught by the combined teaching of Lawrence and Conkling so as to be comprised of the textile layer film taught by Reed to prevent bacterial formation by buildup of excess exudate.

With respect to **claims 20,21,23,24**: The combined teaching of Lawrence and Conkling does not teach a breathability for said top sheet. Since Reed teaches the claimed blend of materials, the combined teaching of Lawrence and Conkling and Reed inherently teaches moist and dry breathabilities within the claimed ranges. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A prima facie case of obviousness has been established when the reference discloses all the limitations of a claim except for a property or function and the examiner can not determine whether or not the reference inherently possesses properties that render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

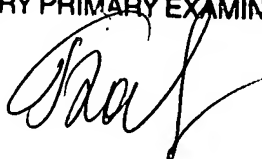
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**



Melanie J Hand  
Examiner  
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May 15, 2007